

# NARPM Broker Owner Retreat

February 25, 2014

## HR Workshop

### Employees and Independent Contractor

- I. Hiring
- II. Discuss Sample Independent Agent Agreement Handout
- III. IRS 20 Independent Contractor Questions - Handout
- IV. Training & Supervising
- V. Reviews & Promotions - 90 Day and Annual Review Handouts
- VI. Termination
- VII. Questions?

# Sample

## INDEPENDENT AGENT/BROKER LICENSEE AGREEMENT

This agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
between Company name and \_\_\_\_\_ Agent/ Broker.

### SECTION I RECITALS

- 1) Company name herein referred to as company name is qualified to and does operate a general real estate business that involves real estate leasing, management and sales.
- 2) Company name enjoys the goodwill of the public and has a reputation for fair dealing with other real estate company Brokers that are engaged in real estate business in and about the State of Washington.
- 3) Company name maintains, for purposes of conducting its business, an office in the State of Washington properly equipped with furnishings and staffed by persons suitable to serving the public as a real estate Brokerage.
- 4) Agent/Broker licensee is defined as a Real Estate Salesperson or Associate Broker, duly licensed in the State of Washington, and is required to practice the Real Estate profession under a Designated Broker.
- 5) Agent/Broker Licensee and company name wish to enter into this relationship in order that the Agent/Broker Licensee may practice the real estate profession and that company name may utilize Agent/Broker Licensee in the transaction of its business.
- 6) In the transaction of it's business, company name finds it desirable to utilize the services of independent salespeople in the procurement of leases or purchasers for said real estate. Purchasers and sellers of real estate may be referred to the Sales Division.
- 7) Agent/Broker Licensee wishes to retain as much independence in the manner in which he/she practices the real estate profession as possible while Agent/Broker Licensee is required by law to practice under a Designated Broker. It is for this reason that company name enters into this independent contractor relationship.
- 8) Any automobile used by Agent/Broker Licensee, shall carry adequate liability insurance coverage with a minimum of \$300,000 personal liability and \$50,000 property damage. Evidence of the insurance policy shall be presented to company name within sixty days of the date of this agreement, and shall name AROUND THE CLOCK, INC. CRMC® as additional Insured.

### SECTION II OBLIGATION OF ATC BROKER

- 1) Company name agrees to make available to the Agent/Broker Licensee all current listings of the Company, and agrees to assist Agent/Broker Licensee by advice and full cooperation in every way possible.
- 2) Company name agrees that Agent/Broker Licensee may share all of the facilities of the office now operated by the company in the transaction of its business.
- 3) Company name agrees to conform to and abide by all Federal and State Laws, Fair Housing, Discrimination, and Washington rules, regulations and codes of ethics which are binding upon or applicable to the company. These include, but are not limited to, the Federal Discrimination Laws, Real Estate License Laws, and the Washington State Landlord/Tenant Act.

### **SECTION III OBLIGATION OF AGENT**

- 1) Agent/Broker Licensee agrees to work diligently, using his/her best efforts to lease any and all real estate listed with company name, to solicit additional lease or management accounts for company name, and otherwise promote the business of serving the public in real estate transactions for the benefit of all parties.
- 2) Listings for the lease and management accounts secured by Agent/Broker Licensee, shall be the property of company name and Agent/Broker Licensee shall have no interest in them upon his/her termination with company name.
- 3) Agent/Broker Licensee agrees to conduct his/her business and regulate his/her habits in a manner designed to maintain and increase the goodwill and reputation of company name.
- 4) Should Agent/Broker Licensee desire to sell listing through Northwest Multiple Listing Service, Agent shall obtain a NWMLS Key Box, Key, and pay any and all deposits and monthly charges required by NWMLS.
- 5) It is the responsibility of the Agent/Broker Licensee to pay all license fees, NWMLS, Federal Income Taxes, Self Employment Taxes, and all other City, State, or Federal taxes applicable to Independent Contractors. After 90 days, the company will pay the first year's membership dues to one professional organization and reimburse one-half of the membership fees every year thereafter. The company will also reimburse independent contractor for one-half of all educational classes and organizational meeting cost. Receipts must be submitted along with a completed check request form.
- 6) Any automobile used by Agent/Broker Licensee shall be furnished at his/her own expense and shall be suitable to the business.
- 7) Attendance at sales meetings, retreats, professional workshops and seminars put on by trade associations is optional, but encourage. Company name provides meetings to assist Agent/Broker Licensee in his/her professional endeavors. Agent/Broker Licensee shall not be required to maintain any specific schedule or attend mandatory sales meeting or schedule vacation periods.

8) Agent/Broker Licensee shall not receive a minimum salary, sick pay, paid vacations or any other compensation other than the commissions or fees paid Agent/Broker Licensee pursuant to this Agreement.

9) Agent/Broker Licensee shall never refer to himself/herself as "employee" or that he/she "works for" company name, but shall refer to himself/herself as Real Estate Sales Associate, Associate Broker, or Property Manager. Agent/Broker Licensee shall be construed to be an Independent Contractor and not a joint venture, partner, servant or employee of company name.

10) Whenever Agent/Broker Licensee sells, buys or leases real estate in his/her own account, the following shall apply. On all real estate transactions Agent/Broker Licensee will disclose in writing to all parties that he/she is a licensed Real Estate Agent/Broker, shall indemnify and hold harmless losses and expenses (including reasonable attorney fees) arising out of or connected with Agent/Broker Licensee's transactions or future disposition of the property.

11) Vacation/Leave Notification for Independent Agent/Broker Licensee as they relate to the duties & Responsibilities in this agreement.

- A. If Agent/Broker is gone three (3) or more business days he/she must assign management responsibilities to another Agent/Broker or officer of ATC.
- B. Agent/Broker(s) Covering agrees to perform the duties described for rental and/or association accounts on behalf of the Agent/Broker on Leave. Agent/Broker covering will be compensated @ a rate of \$250 per week or \$50 per hour by Agent/Broker on Leave after his/her return.
- C. Agent/Broker must fill out Vacation/Leave Notification Form and submit to ATC Broker a minimum of five business days prior to when the leave begins.
- D. Agent/Broker will authorize and submit the Vacation/Leave Notification Form to compensate the agent(s) covering within five (5) business days of when an Agent/Broker returns from leave.
- E. If the Agent/Broker leaving fails to arrange for coverage and submission of the Leave Notification Form he/she authorizes the company to assign his/her portfolio to another agent or company officer for coverage and the company will charge the agent on leave at a rate of twice the amount stated in 11(b). Payment to Agent/Broker covering will be compensated at the rate stated in 11(b). The company will retain the additional charge for assigning the portfolio to another Agent/Broker and completing the Leave Notification form.
- F. Unless the leave is for health reasons, Agent/Broker may only take a maximum of three (3) weeks vacation or leave in succession.

- G. Compensation for listing duties during the leave period shall be a 50/50 split of the listing portion of the lease commission between managing Agent/Broker and Agent/Broker covering.

Those duties include but are not limited to: processing an application(s), executing the lease agreement, performing the move-in inspection and submitting accounting Application and Commission forms and processing the lease documents.

**This compensation is in addition to the weekly/hourly compensation rate for covering management accounts stated on the Agent/Broker Vacation/Leave Notification Form.**

- H. It is understood that the Agent/Broker covering is responsible for the following job duties:

1. Rental Properties:

- a. Review and process daily paperwork including coding bills, and mailing tenant utility notices.
- b. Process accounting reports that need required action such as cash flow and, delinquent reports. Schedule and perform move-in/out inspections.
- c. Submit Preliminary Security Deposit Refund Statement.
- d. Respond to owner/tenant correspondence/questions.
- e. Respond to phone calls.
- f. Complete listing sheet for vacant units on market for rent. This also includes installing sign and supplying a key box.

2. Association Accounts:

- g. Process paperwork, bills, ACC Requests and all correspondence.
- h. Attend Board Meetings.
- i. Perform Drive through inspections when applicable.
- j. Correspond with Board President.
- k. Process monthly board packets.
- l. Respond to emergency emails.

#### **SECTION IV RELATIONSHIP OF PARTIES**

1) Agent/Broker shall exercise his/her own discretion and shall be free from the control of the Broker as to the amount of time spent; however, the manner and method of performing will comply with all applicable Federal and State Laws, including County And City ordinances governing real estate sales and rental management. No provision hereunder shall be construed to create a relationship of employee and employer between the parties; it is the intention and understanding of the parties that the Agent shall be an Independent Contractor.

2) Broker shall not be liable to Agent for any expenses incurred unless specifically authorized in a particular transaction. When necessary, expenses for attorney fees, costs, title abstracts, repairs or similar property expenses shall be paid by Broker and Agent in the same proportion as provided for in

Section VII division of the commission. This shall include legal defense and any and all transactions both before and after closing or termination dates.

3) If company name becomes liable to an owner or tenant as a direct result of negligence by the Agent/Broker Licensee, any expense involved will be shared 50/50 between the Company and the Agent/Broker Licensee. The Agent/Broker Licensee's expenses will be deducted from his/her Commissions. Should an Agent/Broker Licensee leave the company, and negligence on the part of the Agent/Broker Licensee is documented within 90 days after leaving the amount paid out to settle the dispute will also be a shared expense. Negligence on the part of the Agent/Broker Licensee is to be defined as, but not limited to, the following:

- A. Failure to perform a minimum of one interior inspection per year as well as regular exterior inspections.
- B. Failure to follow through on repairs as required by the Landlord/Tenant Law.
- C. Giving tenant permission to make alterations or remove personal property without written owner authorization.
- D. Waiving late fees or not charging prorated rent without written owner authorization.

#### **SECTION V TERMINATION OF AGREEMENT**

- 1) Company or Agent/Broker Licensee may terminate this agreement, either jointly or individually.
- 2) Agent/Broker Licensee agrees that, should this agreement be terminated by either or both parties, at the time of termination any and all property of company name, associates, and/or lease or management accounts be returned to the company's Broker. These items include keys, files, documents, key boxes, signs, etc.
- 3) Agent/Broker Licensee agrees that should this agreement be terminated by either or both parties, the Agent/Broker will remove any and all of his/her belongings from company's office within 24 hours of termination and return all items referenced in paragraph 2 within the same 24-hour period.
- 4) Agent/Broker Licensee, after the termination of this agreement, shall not use to his/her own advantage, or to the advantage of any other person or corporation, any information gained from the files or business of the Broker. All listings and information belong to the Broker.
- 5) Following the termination of the Agreement, Agent shall have no interest or right to share in any listing commissions or management fees, and all listings, management accounts are the sole property of the company Broker. Agent/Broker Licensee shall have no contact with company's clients or in any way solicit company's clients away from the company for one year from date of termination. Any breach of this requirement will be cause for company to initiate legal action against Agent/Broker Licensee for recovery of lost income.

6) Agent/Broker Licensee will be paid for all transactions finalized to date of termination at the next commission pay period. Commissions may be picked up or mailed to Agent at that time. Commissions are paid on the 1<sup>st</sup> and 15<sup>th</sup> of each month.

**SECTION VI STOCK**

- 1) An Agent will receive 500 shares of stock after five years of service to the Company. After each two years additional time with the Company, 250 shares of stock will be issued to the Agent/Broker Licensee.
- 2) Agent/Broker Licensee agrees to enter into company name's Buy and Sell Agreement at the time the stock is issued.

**SECTION VII COMMISSIONS**

The following are the commission splits for Management Fees, Lease Commissions, Sales Commissions and Referral Fees:

- 1) **Management fees** will be split on a 55/45 basis for rental properties, 55% retained by company name and 45% paid to the Agent/Broker Licensee. Community association management fees will be split on a 60/40 basis, 60% retained by company name and 40% paid to the Agent/Broker Licensee. Association resale certificate fees will be split on a 70/30 basis, 70% retained by company name and 30% paid to the Agent/Broker Licensee. Completing lender form fees will be split on a 30/70 basis, 30% retained by company name and 70% paid to the Agent/Broker Licensee.
- 2) **Lease Commissions** are split on a 50/50 basis between the Listing function and the Leasing function. Each 50% shall split 50/50 between ATC and Agent/Broker Licensee. Renewal fees, NSF fees, and service charges shall be split 50/50 between company name and Agent/Broker Licensee.
- 3) **Sales commissions** shall be split between company name and Agent/Broker Licensee depending upon his/her portion of commissions earned in a year. (See tables below). Each new-year will be determined based on the previous year-end commissions earned.

Net Commission Earned by ATC Agent/Broker Licensee

	ATC	Licensee
\$0 - \$7,499	50	50
\$7,500 - \$9,000	40	60
\$9,0001 - \$15,000	35	65
\$15,001 - \$30,000	30	70
\$30,001 +	20	80

Should the Agent/Broker Licensee purchase the property for him/herself, it is not the intent of company name to profit from the transaction but to only retain enough commission to cover

company expenses. Therefore, the split for this type of transaction is 10% to company name and 90% to Agent/Broker Licensee.

4) Referral fees will be split: 10% to company name and 90% to Agent/Broker Licensee.

These splits apply to company name and all Agents/Broker Licensees equally. No negotiations or favoritism will be shown to any Agent/Broker Licensee currently licensed with company name or joining the brokerage.

### Enforcement of Agreement

In the event that it is necessary to enforce the terms of this agreement through legal action brought by either party against the other arising out of or relating to the interpretation or the performance hereto, the venue shall be King County and where the company office is licensed. The successful party that prevails shall be entitled to recover legal fees and court costs from the losing party.

This agreement signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
INDEPENDENT CONTRACTOR OR  
AGENT/BROKER LICENSEE

\_\_\_\_\_  
DESIGNATED BROKER,  
COMPANY NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY, STATE, ZIP

\_\_\_\_\_  
TELEPHONE (S)  
\_\_\_\_\_



## 20 "Independent Contractor" Questions

Employers who classify workers as independent contractors should carefully examine the 20 common-law rules used to determine proper worker classification. The IRS views 'yes' answers to the following to be evidence of an employer-employee relationship.

1. Do you provide the worker with instructions on when, where and how work is performed?
2. Did you train the worker in order to have the job performed correctly?
3. Are the worker's services a vital part of your company's operations?
4. Is the worker prevented from delegating work to others?
5. Is the worker prohibited from hiring, supervising and paying assistants?
6. Does the worker perform services for you on a regular and continuous basis?
7. Do you set the hours of service for the worker?
8. Does the worker work full-time for your company?
9. Does the worker perform duties on your company premises?
10. Do you control the order and sequence of the work performed?
11. Do you require workers to submit oral or written reports?
12. Do you pay the worker by the hour, week or month?
13. Do you pay for the worker's business or travel expenses?
14. Do you furnish tools or equipment for the worker?
15. Does the worker lack a 'significant investment' in tools, equipment and facilities?
16. Is the worker insulated from suffering a loss as a result of the activities performed for your company?
17. Does the worker perform services solely for your firm?
18. Does the worker not make services available to the general public?
19. Do you have the right to discharge the worker at will?
20. Can the worker end the relationship without incurring any liability?

# Sample

## Agent Review

Agent \_\_\_\_\_ Review date \_\_\_\_\_ Time \_\_\_\_\_

Answer the following questions by rating yourself from 1-10; 10 being the highest and 1 being the lowest rating

My job knowledge is a \_\_\_\_

My job skill level is a \_\_\_\_

My time management ability is a \_\_\_\_

The professional image I project to others is a \_\_\_\_

My rating for my co-workers dedication to doing a good job is a \_\_\_\_

My ability to work well with others is a \_\_\_\_

My actions are almost always professional and usually add to the team is a \_\_\_\_

I meet challenges with creative and innovative approaches is a \_\_\_\_

I confidently rely on my intuition, judgment and decision making abilities is a \_\_\_\_

My communication and conflict resolution skill level is a \_\_\_\_

The company recognizes my accomplishments and fairly compensates me for my worth is a \_\_\_\_

**If more room is needed use back of page to complete the following questions**

**Job Description: Role and Responsibilities**

**Accomplishments since my last review:**

**Strengths that I contribute to my job:**

**Weaknesses that are a challenge in my job:**

**Professional goals for \_\_\_\_\_ (year) are:**

**Income \$ \_\_\_\_\_**

**Other:**

**The company could do the following to help me reach my goals:**

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**Outcome:**

Employee's signature \_\_\_\_\_ Date \_\_\_\_\_

Supervisors' signatures: \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_\_